9-20-2013

Sapient Trading, LLC v. John N. Bach Appellant's Reply Brief Dckt. 40575

IN THE SUPREME COURT OF THE STATE OF IDAHO

SAPIENT TRADING, LLC, as assignee of TETON COUNTY, WAYNE DAWSON and ALVA HARRIS, assignors,

Judgment Creditor/Respondents,

vs.

JOHN BACH,

Judgment Debtor/Appellant.

SUPREME COURT #40575-201
(Bingham Co No: 2010-679)

APPEAL from the District Court, Seventh Judicial District, of Idaho, County of Bingham, the Honorable Darren B. Simpson, Presiding.

APPELLANT JOHN N. BACH'S CLOSING BRIEF

Appellant JOHN N. BACH, Pro Se
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Driggs, ID 83422
(208) 354-8303

Respondent's Counsel: Jared Harris of BAKER & HARRIS, 266 West Bridge Street, Blackfoot, ID 83221
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RESPONDENT'S BRIEF SHOULD BE ACCEPTED AS ADMISSION OF THE VALIDITY OF ALL APPELLANT'S APPEAL ISSUES

RESPONDENT'S BRIEF IS REPLETE WITH MISSTATEMENTS OF FACTS AND LAW

Idaho Appellate Rule, Rule 35(b) mandate the following:

"(b) Respondent's Brief. The brief of the respondent shall contain the following. . .under appropriate headings:

(1) Table of Contents. A table of contents, with page refernces, which shall include an outline of the argument section of the brief.

(2) Table of Cases and Authorities. A table of cases (alphabetically arranged), statutes and other authorities cited, with referenes to the pages of the brief where (they) are cited.

(3) Statment of the Cases A statement of the caseto the ex ent that the respondent disagrees with the statement of caseset forth in appellant's brief.

. . . .

. . . .

(6) Argument. The argument shall contain the contention of the respondent with respect to the issues presented on appeal, the reasons therefor, with citations to the authorities, statutes and parts of the transcripts and record relied upon."

The words in a statute or rule of court are controlling as to their very meaning and cogent application. The words "must b and "shall" are mandatory. Twin Falls County v. Idaho Com'n (Ida 2012) 271 P.3d 1202, 1205. Respondent's Brief fails miserably and intentionally evasively to apply such mandatorily applicable words in I.C. 5-401 and I.C. 5-404, which prefacingly state:

"Actions for the following causes must be tried in the county in which the subject of the action or some partythereof is situated, . ." and "In all other cases the action must be tried in the county in which the defendants, or some of the reside, at the commencement of the action; . . ."

Appellant refers to and incorporates herein, his Opening Brief, Part I. pages 16 through 26, as though set forth herein in full, in each and every statement and particular. It is clear that Resondent by its Table of Cases and Authorities does not mention, nor recognize as applicable and controlling herein, the authorities cited, argued and applied Appellant's Opening Brief. Said authorities cited therein are simply ignored, evaded and completely unaddressed in Respondent's Brief. The only, and very limited and obfuscatingly evasive reply, in violation of I.A.R. Rule 36(b)(6) by respondent,is possibly the last sentence on page 2, Part III, through page 7, of its brief. Respondent's not merely equivocate, but feignly qualify any reply or address of appellant's arguments by they "each seem to revolve around the issue of . . . the District Court has jurisdiction," "Appellant appears to make the argument that the Bingham County District Court lacks personal jurisdiction over him," and that "Appellant also appears to argue that the District Court lacks subject matter jurisdiction as a result of the action being domesticated in Bingham County instead of Teton County.

Respondent lamely cites by the prefacing word "See",

the case entitled "Moore v. Rohm & Haas Co., 446 Frd 643, 646 (6th Cir. 2006)", but Moore has no application or involvment in the pleadings nor applications of respondent before the Bingham County District Court, See. Schneider v. Nat'l R.R. Passenger Corp. (1995) 2nd) 72 F3d 17, 19-21. (Court's judgment is void, if it lacked jurisdiction of the subject matter or parties or if court acted in a manner inconsistent with due process) (CT 62, 99-112, Proceeding Unnoticedby Respondt.

Respondent fails to address the mandatory conditions of pleading and proof called for in Appellant's citations and evaluations of three (3) cases, which it totally ignores, as also did the district court judge, to wit: (1) Grazer v. Jones 154 Idaho 58, 294 P.3rd 184 (2013); (2) G & R Petroleum, Inc. v. Clements 217 Idaho 119 (1995) 896 P.2d 50; and (3) Grynberg 271 P.3d at pages 535-537.

Despite the incorrect "claims and statements" by Respondent on page 3 of its brief, all of Appellant's arguments are correct, the Bingham County district court lack both subject matter jurisdiction and personal jurisdiction over him, and Respondent's reliance upon I.C. 10-1302 language: "A copy of any foreign judgment certified in accordance with the act of congress or the statutes of this state may be filed in the office of the clerk of any district court of any county of this state. . ."(Emphais added), i clearly unconstitutional and void because of the mandatory language of I.C. 5-401 and 5-404.

NO FILED DOCUMENT, NOR IN ANY AFFIDAVIT NOR IN ANY ARGUMENT PRESENTED BY RESPONDENT AND ITS ATTORNEYS DID IT ALLEGE, SHOW NOR PROVE THAT THE PREVIOUS FEDERAL JUDGMENT HAD PROPER

JURISDICTION. The Idaho Supreme Court has at least three times held such applications, showing and proof are necessary to state a claim based upon a foreign judgment. Grazer, supra, Headnote 25. Incorporated as though set forth in full in each particular and statments are Pages 25 through 28 of Appellant's Opening Brief.

The district court judge knew, admitted and stated that Appellant was not a resident, citizen nor owned property or any investments in Bingham County. (CT 84, 112-117

And despite such knowledge and admissions, said judge also stated that : "Where a statute is clear and unambiguous the expressed intent of the legislature must be given effect." (Emphasis a (CT 57) But he failed/ignored to acknowledge the existence and mandatory applications of I.C. sectons 5-401 and 5-404. He further deliberately misstated the facts and the legal holding and principles of L & R Exploration Venture v. Grynberg 2011 WL 32487 (Colo App 2011, reh.den. (February 17, 2011 claiming that such decision did not contain any express or implied reference to venue! (See Appellant's Opening Brief Pages 7) But I.C. section 5-404 expressly mandates that venue of appellant being in Teton County, Idaho, the foreign judgment, if that were to have been alleged and proven as being within the jurisdiction of the federal district court, was to be ("must be")in which appellant, the defendant, "reside(s), the commencment of the action." (See Appellant's Opening Brief, pp 24-25, which are incorporated herein as though set forth in full in each particular.)

The district court judge in his ORDER DENYING MOTION FOR CHANGE OF VENUE, (CT 53-60), citing and misapplying the Grynberg case, 2011 WL 32487 (Colo App 2011), reh. den. Feb. 17, 2011), grossly, where he had no discretion, being wholly without jurisdiction, concluded and held: " . . Section 10-1302 does not contain any express or implied reference to venue. Rather the plain language allows a foreign judgment to be filed in the district court of any county in the State of Idaho. The Legislative's failure to include any particular venue language is an indictation of legislative intent. Had the Legislature intended foreign judments to be filed in a certain venue, they were at leave to so designate. Where Idaho Code section 10-1302 specifies that a foreign judgment may be filed in the district court of any county such broad designation excludes limitation by the venue rules." (CT 59). Such judge concluded that appellant's arguments "center upon the location of the property and persons involved (and) . . .are not persuasive." (CT 59)

BUT, the holding and language of Grynberg, 271 P3d at pages 535 through 537, said district court judge clearly and most craftly ignoed. The court in Grynberg most astutely held and stated the following principles which should be adopted and applied in Idaho, to wit:

> "We perceive no ambiguityin the statute's plain language, It does not contain any express or implied reference to venue. Rather, the plain language of the statute is limited where a party may file a foreign judgment in Colorado based only on jurisdiction. (Citation omitted)('We will not construe a statute in a manner that assumed General Assembly's failure to include particularl language is a statement of legislative intent.'). It is equally clear that by refer-

ing to 'jurisdction over the original action, the statute limits the filing of foreign judgment only by the subject matter jurisdiction of the of the Court."

" . . . Venue, in contrast, refers to the 'localiaty where an action may be properly brought.' Borguez, 751 P.2d at 641; see Sanctuary Houe, 177 P.3d at 1258 ('Once it is established that the courts of Colorado have jurisdic tion to hear an action, the question of venue determines which particular Colorado court should hear and try. . . see genrally 14D charles A. Wright, Arthur R. Miller & Edard H. Cooper, Federal Practice and Procedure Sec 380 (3rd 2007)a . . " (End at page 535)

Especially significant is Footnote "1" in Grynberg which Pointed out:

" . . . although California and New Mexico's versions of the filing statue does not use the word 'venue', they otherwise incorporate a venue requirement. Cal. Civ. Proc. sec 1710120 (b) (2009)('the proper county for the filing of a foreing judgment is any of the following: (1) the county in which any judgment debtor resides. (2) If no judgment debtor is a resi- dent, any county in this state.') N.M. Stat. Ann & 39-4A, 3A (12010)(a foregign judgment 'may be filed in . . . the dis' trict court of this state in which the judgment debtor reside or has any property or perty rights subject ot execution, foreclosure, attachment or granishment.')"

What was the district court's thinking and bias in not following correctly the holdings, principles and statements of the court in Grynberg? ? ? Did the district court judge consider and evaluate the numerous violations of procedural and due pro- cess that would be fostered by applying his logic and principle that in filing and recording a foreign judgment in any county in Idaho, the judgment debtor , his witnesses, evidence and motions to be made, would be more than severly hmpered, if not fully eviscerated and precluded? There would be no end to the injusatice and abuse of a debtor's rights in having him or her travel to a county clear across Idaho from where the true venue, jurisdiction and his residence was.

Of course, the respondent judgment debtor more than violated such injustices; it invited the numerous errors of the district court judge's nonjurisdictional and substantive ruling and orders. as stated in Apellant's opening brief, pages 3 through 11 he set forth the very first issuance of a Writ of Execution (CT 25-27) on/against "All causes of action, rights and and judgments of Judgment Debtor (in four Teton County Civil Actons, numbered CV 2002-0208, CV 2001-0205, CV 2001-0265 and CV 2001-033, Respondent without any final judgment being issued thereon, due to the district court's lack of jurisdiction in all forms, resulted in the issuance of SHERIFF'S CERTIFICATE OFSALE OF PROPERTY SOLD UNDER WRIT OF EXECUTION, revealing said rights via judgments were "sold on the 15th day of August, 2011, to: Sapient Trading, LLC, the highest bidder, . .for a credit bid of $100.00. . " (CT 98, Applt's Opening Brief, page 9.)

The levy per said first writ of execution and all orders of the Bingham District Court resuting in the issuance of said SHERIFF"S CERTIFICATE OF SALE OF PROPERTY SOLD thereunder are "VOID" and moreover an intentional abuse of process in using the litiation process for an improper purpose whether or not a claim is colorable. (Anodyne Therapy, LL (7th Cir. 2010) 626 P.3d 958, 963-966) Further, respondenthas violated Appellant's 14th Amendment right, of being free from Respondent deliberately fabricaing evidence of not just facts, but of void jurisdiction, etc. Coatanich v. Dept of Social and Health Services (CA 9th Wash, Nov. 19, 2010) 627 F3d 1101, 1112-1114.

Most recently, Appellant filed with the Idaho Supreme Court an ex parte motion and motion per I.A.R. Rule 13(g) to stay any levy of the currently issued writ of execution; such application by Appellant was denied by this Court. Supposely, a sheriff's sale was held, but, no notice of any kind, via a served copy of a Sheriff's Certificate of Sale, etc., has been made upon Appellant. Such sale if actually held and completed is also "VOID ab initio" for the lack or nonexistence of jurisdiction via the orders and judgment of the Bingham County Court.

As was set forth on page 6, Appellant's Opening Brief, he advised the district court that in seeking a change of venue that equitable doctrines of "set off and recoupments" applied due to a judgment he had against two of the assignors; he even argued that justice required the action's venue in Teton County. (CT 50) Appellant could not litigate said equitable doctrine in said Bingham County Proceedings, as he cannot stipulate nor agree/consent to any jurisdiction where there is absolutely no jurisdiction to begin with; moreover, doing such would lead to Respondent claim he should somehow be estopped from raising the absence or lack of jurisdction of the Bingham Court.

As stated in page 4, Appellant's Opening Brief:

"all real properties awarded at any times and the moneys further awarded hi, and ordered renewed by the Teton County Court, No. CV 02-208 . . . are Offset amounts and constituting properties per 11-603 without limitations, propertie

exempt re needs for of medical conditions, care, etc, reasonably necessary to (Appellant's) support. (11-604 (see subparagraph 2), 11-604A (see subparagraphs (2)(3) (4)(5), etc. : (Ct 33-34)

> "Appellant further in his Claim of Exemption, asserted:
>
> "All such money/damages awarded (him) along with the real properties awarded John N. Bach in said three (3) Teton Actions are exempt, s state supra; specially per 11-603 and 11-604(1)(a)-(d) and (2)(3).L (CT 35)

The district court judge ignored said argument and authorities, and by his rulings and orders therafter, explictly denied and refused to grant them. Such actions and determinations were also "void ab initio." All orders or rulings or memoranda denying Appellant's motion and requests for change of venue wer/are likewise, "void ab initio."

Appellant's postjudgment motions (for new trial) and to alter, amend or vacate judgment, Rule 59(e), (CT 230-234, 238-243 should have been granted, sua sponte, by the district court, especially as to the Rule 59(e) motion, since such court had no jurisdiction, authority, nor any stretch of discretion whatsoever, to hear any matter or proceeding in Bingham County. Pages 13 through 14 of Appellant's Opening Brief are incorporated herein, as though set forth in full. Respondent is barred by his actions of intentional abuse of process and for using false and misappropriate facts and deceptively argued jurisdiction, so he is now to be judicially and quasi estopped to want to have this action be tranferred or refiled in Teton County, Idaho. Respondent is not to be rewarded nor permitted to proceed with any further attempts to levy any assigned foreign judgments to it

Respondent was not entitled to nor did it have standing to request any order of costs, attorney's fees or expenses, and is neither of/with standing to request or have such award to it in opposing this appeal which should be granted in and upon all grounds, basis and reasons stated herein and in Appellant's Opening Brief, with all orders and judgment of the Binghamistrict court found and held to be "VOID Nunc Pro Tunc," and the striking, quashing and vacating of all orders. The CONCLUSION, page 28, of apppellant's opening brief is incorporated in full herein as though stated in each and every statement, request and particular.

Respectfully submitted, September 19, 2013

John N. Bach

JOHN N. BACH, Pro Per

CERTIFICATE OF SERVICE BY MAIL: I hereby certify, this Sept. 19, 2013 that I did mail, via first class overnight mail, the original and seven (7) copies of this closing appeal brief to the Clerk, Idaho Suprme Court, P.O.Box 83720, Boise, Idaho, 83720-0101; and two (2) copies of this brief to Jared Harris, Baker and Harris, 266 West Bridge, Street, Blackfoot, Idaho 83221.

John N. Bach